

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

1 ANTONIO RIVERA DIAZ, et al.,
2
3 Plaintiffs,
4
5 v.
6 AMERICAN AIRLINES,
7 Defendant.

CIVIL NO. 98-2202 (RLA)

RECEIVED & FILED
1999 SEP -3 AM 7:45
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

MINUTES OF SETTLEMENT CONFERENCE
HELD ON AUGUST 25, 1999

8
9 At the SETTLEMENT CONFERENCE held on August 25, 1999 from 4:15
10 p.m. to 4:50 p.m. plaintiff was represented by RAFAEL A. OLIVERAS,
11 ESQ. and defendant by ADRIADNA ALVAREZ, ESQ.
12

13 Defendant concedes that plaintiff is entitled to receive
14 benefits under the early retirement provisions of the plan but is
15 unable to do so until plaintiff submits an application which he has
16 never done. Further, defendant questions our jurisdiction. ERISA
17 requires the exhaustion of remedies, i.e., that the benefits be
18 requested and denied prior to coming to court. Counsel for
19 defendant indicated that she had provided opposing counsel with the
20 pertinent application forms without any response.

21 Plaintiff's counsel advised that his client's failure to
22 request benefits was due to the lack of notice as required by ERISA.
23 Defendant argues, however, that the notice requirement is upon the
24 Plan Administrator, not the employer and that defendant had
25 attempted to give notice on two separate occasions.
26

CIVIL NO. 98-2202 (RLA)

Page 2

1 Counsel for plaintiff indicated that his client had encountered
2 mental problems after his termination from employment which
3 explained the undue delay in showing any interest in early
4 retirement benefits.
5

6 It is undisputed that plaintiff may receive benefits
7 prospectively from the date he submits the application. Defendant
8 advised that the retroactive payment of benefits was not possible
9 under the plan. To do so would constitute a violation of its
10 fiduciary duty and subject it to dismantling by IRS. However,
11 plaintiff rejected any relief limited to prospective payments.

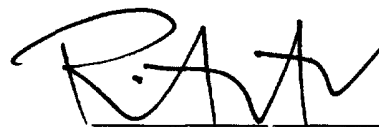
12 Given the impasse, the parties will submit their respective
13 dispositive motions.

14 Plaintiff shall serve defendant his sur-reply, if warranted,
15 **no later than September 15, 1999.** Defendant shall file the
16 dispositive motion package **no later than September 20, 1999.**
17

18 Plaintiff's counsel shall provide opposing counsel with the
19 last page of all his dispositive motions and responses served thus
20 far which will be submitted with his **original** signature.

21 IT IS SO ORDERED.

22 In San Juan, Puerto Rico, this st31 day of August, 1999.

23
24 

25 RAYMOND L. ACOSTA
26 United States District Judge